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Deputy Prime Minister

Creating sustainable communities

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Our Ref: APP/N1920/A/03/1116117  
Your Ref Am/JME/19702  
11 March 2004

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 (SECTION 78)**  
**APPEAL BY MR P EGAN AND OTHERS**  
**PROPOSED 12 PITCH PRIVATE GYPSY SITE AND VEHICULAR ACCESS TO**  
**SUMMERSWOOD LANE AT TWIN OAKS CARAVAN PARK, SUMMERSWOOD LANE,**  
**RIDGE, HERTS**  
**PLANNING APPLICATION NUMBER: TP/2002/1115**

1. I am directed by the First Secretary of State to say that consideration has been given to the report of the Inspector, Mr Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS, who held an inquiry on 1 and 2 October, 24 and 25 November 2003 into your clients' appeal against the decision of Hertsmere Borough Council to refuse planning permission for a 12 pitch private gypsy site and vehicular access to Summerswood Lane at Twin Oaks Caravan Park, Summerswood Lane, Ridge, Herts.

Procedural Matters

2. At the inquiry the appellants confirmed that the appeal site shown on the location plan A was incorrectly drawn and shows a substantially larger area than the land within the appellants' ownership. A revised location plan C was submitted at the inquiry. However the revised plan does not coincide with the layout of the proposed 12 pitches in the block plan B (IR3). The Secretary of State agrees with the Inspector (IR5) that given the reduction in the site area, the amendment would not prejudice any third party and like the Inspector he has considered your clients' appeal on the basis of the amended proposal, with the appeal site shown on plan C (IR6).

Reference Back to Parties

3. Since the close of the inquiry, the Secretary of State has received correspondence from The Community Law Partnership dated 8 January 2004 enclosing a copy of the transcript of the case of Chelmsford Borough Council v First Secretary of State and Mrs Draper dated Tuesday 25 November 2003 which, in the interests of natural justice required wider reference back to the inquiry parties prior to making his decision. On 16 January 2004 the Secretary of State invited representations from the parties on this



issue.

4. Comments were received on these representations from The Community Law Partnership dated 7 February 2004. The Secretary of State has taken account of this evidence in his consideration of the appeal, but he does not consider it necessary to summarise the representations received. Copies of any of the correspondence can be made available upon written request to the above address.

#### Inspector's conclusions and recommendation

5. The Inspector recommended that the application be refused. The Secretary of State notes that the Inspector has in error referred to this proposal as an application instead of an appeal. For the reason given below the Secretary of State agrees with the Inspector's recommendation and has decided to dismiss the appeal. A copy of the Inspector's report is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

#### Policy considerations

6. The Secretary of State has given careful consideration to the Inspector's report and to all the arguments for and against the proposal. Also, he has had regard to Section 54A of the Town and Country Planning Act 1990, which requires that planning appeals shall be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan includes the Hertsmere Structure Plan Review 1991-2011 adopted in 1998 and the Hertsmere Local Plan adopted in 2003. The development plan policies most relevant to the planning application to which the Secretary of State has had regard are summarised in paragraphs 20 to 23 of the Inspector's Report. The appeal site lies within the Green Belt (IR27). The Secretary of State agrees that the Structure Plan and local plan policies reflect national policy on Green Belts, as set out in PPG2.
7. The material considerations, which the Secretary of State has taken into account, include Planning Policy Guidance note 2 (PPG2) 'Green Belts'; Planning Policy Guidance note 3 (PPG3) 'Housing'; Planning Policy Guidance note 7 (PPG7) 'the Countryside-Environmental Quality and Economic and Social Development, Planning Policy Guidance note 13 (PPG13) 'Transport'; DOE Circular 1/94 'Gypsy Sites and Planning' and DOE Circular 18/94 'Gypsy Site Policy and Unauthorised Camping'.
8. Other material considerations are Hertfordshire County Council's Guide to Policy on Gypsies and Travellers (IR 24). The Secretary of State has also taken into account draft Consultation Papers on Proposed Changes to Planning Policy Guidance Note 3 Housing, "Supporting the delivery of new housing", and "Influencing the size, type and affordability of housing", and draft PPS7 "Sustainable Development in Rural Areas". However, since these are still at consultation stage and may be subject to change, he gives them only limited weight.

#### Main Issues and Consideration

9. The Secretary of State considers that one of the main issues in this appeal is whether the appeal proposal accords with development plan. He further agrees with the Inspector (IR149) that the other main issues in this appeal are:
  - Whether the appellants have gypsy status;



- The effect of the proposal on the Green Belt and whether there are any very special circumstances sufficient to overcome the presumption against inappropriate development in the Green Belt and any other harm identified;
- The effect of the proposal on the character and appearance of the surrounding area;
- The effect of the proposal on highway safety;
- The effect of the site's location in relation to services and facilities;
- The need for the site in relation to existing site provision; and
- The effect of the appellants' personal circumstances, including site, health and education needs.

#### Conformity with the Development Plan

10. There is no dispute between the parties that the proposal constitutes inappropriate development in the Green Belt. For the reasons given in paragraph 163 of the Inspector's report the Secretary of State agrees that the proposed gypsy caravan site is inappropriate development in the Green Belt and by definition harmful to the Green Belt. He considers that the proposal is not in accordance with Structure Plan Policy 5, and Local Plan Policy C 1. The proposal would also not conform with Government policy advice in PPG2. The Secretary of State has considered whether there are any very special circumstances sufficient to outweigh the harm to the Green Belt and any other harm.

#### Whether the appellants have gypsy status

11. The Secretary of State agrees with the Inspector at IR152 that the appellants are from the same family, and prior to coming to this site, have followed a nomadic way of life. For the reasons he gives at IR 153 to 155, the Secretary of State agrees with the Inspector's conclusion at IR 156 that Mr Egan maintains a nomadic way of life, although this is marginal, and that there is insufficient evidence to determine whether the other men on the site follow a nomadic way of life (IR 157). For the reasons given at IR 158, the Secretary of State agrees that a temporary loss of nomadic status need not show a permanent loss of gypsy status.
12. The Secretary of State agrees with the Inspector for the reasons given at IR159 that Ann Egan, Margaret Quilligan, Michael Slattery and Catherine Flynn have given up their nomadic way of life and have therefore given up their gypsy status as defined for the purposes of planning.
13. The Secretary of State agrees that some weight should be given to the gypsy tradition of travelling in family groups, and to the fact that although some of the appellants have lost their gypsy status, this should not itself weigh heavily against the others (IR 160). He agrees that dismissal of this appeal would be likely to lead to a return to a traditional nomadic lifestyle (IR 161).
14. Notwithstanding his finding that some members of the group had lost their gypsy status, the Inspector considered (IR162) that gypsy status should be considered in relation to the proposal. The Secretary of State has considered the proposal as if all the appellants were gypsies.



The effect of the proposal on the Green Belt, and whether there are any very special circumstances sufficient to overcome the presumption against inappropriate development in the Green Belt and any other harm identified.

15. The Secretary of State agrees with the Inspector, for the reasons given at IR163, that the proposal is inappropriate development in the Green Belt, and is therefore by definition harmful to the Green Belt (paragraph 3.2 of PPG2), and is contrary to the development plan, PPG2, and Circular 1/94.
16. The Secretary of State considers that the proposal would, in addition, cause serious harm to the Green Belt, over and above the harm caused by inappropriate development. He agrees with the Inspector, for the reasons given at IR 164 and 165, that the proposal would introduce an unacceptable urbanisation into the landscape, and cause harm through the sprawl of development into the open countryside. For the reasons given at IR 166, the Secretary of State also agrees that the proposal would cause harm to the visual amenity of the Green Belt.

#### Conclusion on Green Belt

17. The Secretary of State agrees with the Inspector's conclusion at IR 167, that the proposal would cause harm to the Green Belt by reason of inappropriateness, and further substantial harm to the openness, purposes and visual amenity of the Green Belt, for the reasons given at IR 163 to 166.

#### The effect of the proposal on the character and appearance of the surrounding area The Conservation Area

18. The Secretary of State agrees with the Inspector that weight should be attached to the Council's non-statutory guidance for the Ridge Conservation Area (IR 169), although the appeal site is not itself in the Conservation Area (IR 172). He agrees with the Inspector that the visual appearance of the Conservation Area relative to the countryside is important (IR 171).

#### Countryside

19. The Secretary of State agrees with the Inspector at IR 173, for the reasons given in IR 172 and 173, that the caravans in their existing location cause substantial harm to the rural character and appearance of the countryside, and that their visibility would be considerably increased if spread over the whole of the appeal site.

#### Conclusion on the countryside and Conservation Area

20. The Secretary of State agrees with the Inspector at IR 174 that the proposal would cause substantial and unacceptable harm to the character and appearance of the countryside for the reasons given at IR 169 to IR 173.

#### The effect of landscaping

21. The Secretary of State agrees with the Inspector at IR 176, for the reasons given in IR 175 to 176, that the fencing proposed on the site would be unacceptable, (IR 175), and that landscaping would not be sufficient to mitigate the substantial harm of the present arrangement, or of the proposed use (IR 176).



22. The Secretary of State agrees with the Inspector at IR 177, for the reasons given in that paragraph, that the location of the site is wholly unacceptable because of the substantial harm caused to the Green Belt.

23. The Secretary of State agrees with the Inspector that the proposal would conflict with the aims and objectives of the development plan policies listed at IR 178.

#### The effect of the proposal on highway safety

24. The Secretary of State agrees with the Inspector at IR 182, for the reasons given at IR 179 to IR 181, that the proposed access would accord with the aims and objectives of Local Plan Policy M9, and that there would not be unacceptable harm in relation to highway safety (IR 226).

#### The effect of the site's location in relation to services and facilities

25. The Secretary of State agrees with the Inspector at IR 187, for the reasons given in IR 183 to IR 186, that whilst the distance to the major road network adds little weight to this issue, because of the location of the site in relation to services and facilities, the proposal would unacceptably conflict with the aims of PPG13 to reduce the need to travel, especially by private car, and would also conflict with Local Plan Policy S9.

#### Very Special Circumstances

26. The Secretary of State agrees with the Inspector at IR 188 that it is for the appellants to show why permission should be granted and that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness and any other harm identified, is clearly outweighed by other considerations. He agrees with the Inspector that in this case the other considerations are

- existing site provision general need
- the appellants' needs – site/location, education, health

#### Existing site provision general need

27. The Secretary of State agrees with the Inspector at IR 192 that limited weight should be given to Local Plan Policy S9 for the reasons given at IR 190-192.

#### Provision

28. The Secretary of State agrees with the Inspector at IR 196 that for the reasons given in IR 193 to IR 195, there is a need for site provision generally, and in the Hertsmere area, and with his conclusion in IR196 that the need for site provision in the area adds weight to the appellants' case.

#### Appellants' needs

##### Site/Location

29. The Secretary of State agrees with the Inspector at IR 197 that as Hertsmere was an area regularly visited by the appellants, support for their need for a site in the area is gained from Structure Plan Policy 12. The Secretary of State also agrees with the Inspector at IR 199 that there are likely to be locations within the Green Belt which would be likely to be more suitable than others as a site location.



30. The Secretary of State agrees with the Inspector at IR 200 that the amount of work done by Mr Egan in the area is not sufficient reason in itself for the appellants to be at this specific site.
31. The Secretary of State agrees with the Inspector at IR 201 for the reasons given in that paragraph, that the need to accommodate the whole group on one site would severely and unreasonably limit the possibilities of finding a suitable site. He agrees with the Inspector at IR 202 for the reasons in that paragraph that the evidence presented does not show that a sufficiently extensive search for other land has been undertaken to conclude that there would be no other land in a reasonable location, that would be suitable to accommodate some or all of the appellants.
32. The Secretary of State agrees with the Inspector at IR 204 for the reasons given in that paragraph that the reasons why the appellants should use this specific site are tenuous, and are matters that would be likely to be found in relation to many other parcels of land. He also agrees that there are strong reasons why the appeal site should not be used as proposed (IR 204). However, he also accepts that it is likely to be some time before either a suitable site, or pitches on a council site, become available, and therefore that it is likely that if the appeal is dismissed the appellants would be forced back on the road. He agrees that the matter of need therefore weighs in their favour.
33. The Secretary of State has considered whether a temporary permission should be granted, although there has been no suggestion of a temporary permission being sought by the appellants (IR219). The Secretary of State has concluded that a temporary permission in this case would be inappropriate, as it would not overcome the overriding planning objections.

### Education

34. The Secretary of State agrees with the Inspector at IR 207 that the educational needs of the children residing at the appeal site add some weight to the appellants' case. However, he also agrees that living at another location of more or less the same distance from these schools, would be no worse than the appeal site in this respect (IR 205), and that most schools would be able to provide a suitable education for these children (IR 206).

### Health

35. The Secretary of State agrees with the Inspector at IR 208 that the appeal site is not close to the hospital or other medical facilities. He also agrees that other locations would not necessarily be worse than the appeal site in this respect. He acknowledges that regular attendance at the same hospital and doctor allows familiarity with the patient's condition, a benefit which would be likely to be lost through regular travelling (IR 208). He further acknowledges that travelling would be very difficult and unacceptable for those with severe medical conditions, such as Mrs Ann Egan, and Mrs Margaret Quilligan (IR 211).
36. The Secretary of State agrees with the Inspector at IR 212 that health problems are significant matters weighing in favour of the appellants, but that those with severe health problems would not justify the extensive use of the site proposed, and the substantial harm associated with it. He further agrees that health and educational matters are tempered by the fact that the site was occupied knowing that planning permission to stay there had been refused, and the appellants did not register with the Local Authority for a place on a council site. He further agrees that a smaller site may
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be sufficient to accommodate those members of the group with the most severe health problems (IR 212).

#### Conclusion on very special circumstances

37. The Secretary of State agrees with the Inspector at IR 213, for the reasons given in IR 189-212 that although weight should be given to the difficulties in obtaining alternative sites, health and education needs of the appellants and others living at the appeal site, none of the above considerations, either individually or in combination, amount to very special circumstances sufficient to overcome the presumption against inappropriate development in the Green Belt, and the substantial and unacceptable harm identified to the openness, purposes and amenity of the Green Belt, and the character and appearance of the surrounding area.

#### Other Matters

##### Human Rights

38. The Secretary of State agrees with the Inspector at IR 214, that if the establishment of a home in a particular place is unlawful, the position of the individual(s) objecting to an order to move is less strong. The Secretary of State agrees with the Inspector at IR 216, that the appellants were aware of the planning situation prior to moving on to the appeal site, which is material to the Human Rights considerations. The Secretary of State agrees with the Inspector at IR 217 that it would not be acceptable for the appellants to live in houses or flats as this would conflict with their chosen way of life, and that the matters in IR 217-218 add some weight in favour of the appellants.

39. The Secretary of State agrees with the Inspector at IR 219, that the harm caused to the Green Belt, surrounding countryside and conservation area far outweighs considerations relating to the lack of alternative sites, health and education. He agrees that a temporary permission would not be acceptable for the reasons given in IR 219. The Secretary of State agrees with the Inspector's conclusion at IR 221 that dismissal of the appeal would not result in a violation of the appellants' rights under Article 8 of the Convention, for the reasons given at IR 220 to 221.

#### Previous Appeal Decisions

40. The Secretary of State agrees with the Inspector for the reasons given in IR 222 that the differences between the Pylon site and the appeal site are substantial.

#### Precedent

41. The Secretary of State agrees with the Inspector at IR 224 that were this proposal to be allowed, it would be on the basis of very special circumstances that would be particular to this site and appellants, and would not in itself set a precedent for other development. However, he also agrees with the Inspector at IR 225, that if this appeal were allowed, the value of the rural character of the area would be dramatically diminished.

#### Conclusion

42. The Secretary of State has weighed up all of the factors in this case. It would be inappropriate development in the Green Belt, and would cause additional harm to its openness, purpose and visual amenity. It would cause harm to the character and appearance of the surrounding area, which would not be mitigated by landscaping, and the landscaping proposed would cause further harm. It would not preserve or enhance local and regional government • housing • planning • fire • regeneration • social exclusion • neighbourhood renewal



the character of the conservation area. It would not accord with the development plan and PPG 13 objective of locating development where reliance on cars would be reduced.

43. The Secretary of State has not found compelling reasons why the appellants should be on this particular site, as work, schools and hospitals/doctors could be accessed as easily from other sites within the same distance of these facilities as the appeal site. Although the appellants have carried out a site search, greater flexibility in this search should enable identification of a suitable site for those members of the group who are no longer able to travel.
44. The Secretary of State considers that gypsy status is appropriate in this appeal, and has attached weight to the general need for sites, and the appellants' and others' at the site's, personal need for sites. He has taken account of the health and educational needs of the appellants, and the fact that a move from the appeal site would lead to interruption in the children's education, and the continuity of health care. He agrees with the Inspector that the appellants' human rights would be infringed, but that refusal would not place a disproportionate burden on them.
45. In weighing all factors together, the Secretary of State concludes that the harm to the Green Belt and surrounding countryside caused by this proposal is so great that it outweighs the appellants' personal circumstances. He therefore agrees with the Inspector's conclusions at IR 226-227, and his recommendation at IR 229. The Secretary of State concludes that the appeal should be dismissed, and planning permission be refused.


#### Formal Decision

46. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector and accepts his recommendation. He hereby dismisses your clients' planning appeal for a 12-pitch private gypsy site and vehicular access to Summerswood Lane, at Twin Oaks Caravan Park, Summerswood Lane, Ridge, Herts.

#### Right to challenge the decision

47. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.
48. A copy of this letter has been sent to Hertsmere Borough Council and to all those who have requested a copy.

Yours faithfully



Elizabeth Sealey

Authorised by the First Secretary of State to sign in that behalf